

ZONING BOARD OF REVIEW

Barrington, Rhode Island

November 15, 2012

APPLICATIONS: #3689, 3695 and 3697

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, Mark Freel, Ian Ridlon, David Rizzolo and Stephen Venuti.

Also present was solicitor Andrew Teitz as well as Building Official Robert Speaker.

At 7:08 P.M. Mr. Kraig opened the meeting and proceeded to hear the following matters. At 7:34 P.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on the applications it had heard.

Continuation of application #3689, William Fleming, 9 Baron Road, Barrington, RI 02806, applicant and owner, for permission to construct an elevated deck and porch; Assessor's Plat 29, Lot 166, R-10 District, 9 Baron Road, Barrington, RI 02806, requiring dimensional relief for being within 53 feet of a wetlands/waterbody, where a minimum of 100 feet is required.

Mr. Kraig read into the record a letter from the applicants explaining

that they would not be available to appear for this matter until approximately June of 2013.

MOTION: Upon a motion by Mr. Freel, with a second by Mr. Venuti, the Board voted unanimously (5-0) to withdraw the application without prejudice.

Application #3695, Mark and Cynthia Butler, 38 Bay Road, Barrington, RI 02806, applicants and owners, for permission to remove the existing garage and replace it with a new garage of the same size in the same location; Assessor's Plat 9, Lot 20, R-10 District, 38 Bay Road, Barrington, RI 02806, requiring dimensional relief for side yard setback.

Present: Mark and Cynthia Butler, 38 Bay Road, Barrington, RI

There was no one in the audience to speak for or against this application.

The applicants explained that their existing garage is in disrepair; even the concrete slab is unusable as it had been damaged by frost heaves. They are proposing to demolish the existing structure and replace it with a new garage in the same location. To attempt to locate the garage farther from the side lot line would require curving the driveway which would be troublesome (there is no turn around space, so a car is backed in or backed out) and the structure would

eliminate most of the backyard. The garage is a small, single car size.

MOTION: Mr. Freel moved to approve the application. Mr. Ridlon seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board members stated they were in favor of approving the application for the following reasons:

„« The proposed location is the only logical location for the garage

„« The lot is very undersized for an R-10 Zone

„« The applicants are replacing an existing structure; there will be no real impact on the surrounding properties

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set

forth in Section §185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

Application #3697, Fred and Debbi Coury, 110 Walnut Road, Barrington, RI 02806, applicants and owners, for permission to create a 300 square-foot addition on the north side, a 2½' extension of the sunroom and a new front entry stoop; Assessor's Plat 18, Lot 103, R-10 District, 110 Walnut Road, Barrington, RI 02806, requiring dimensional relief for front yard setback, side yard setback and for lot coverage.

Present: Fred and Debbi Coury, 110 Walnut Road, Barrington, RI
Alexander Hurditch, architect, 576 Annaquatucket Road, North Kingstown, RI

There was no one in the audience to speak for or against this application.

The applicants explained that they are seeking to create a larger bedroom with a bathroom in order to better accommodate the needs of their adult child with special needs; their child currently has a very small bedroom, tiny closet, and a shared bathroom down the hall. Additionally, they would like to square off the rear of the house to create a family room to the rear of the home.

It was noted that the lot was undersized for the zone, making the lot coverage requirement more difficult to meet. The proposed location is the only logical location for the bedroom to conform to the size needed - a rear addition would still require relief and it would eliminate much useable space in the back yard.

MOTION: Mr. Venuti moved to approve this application. Upon a second from Mr. Freel, the Board voted unanimously (5-0) to approve the application.

DISCUSSION:

The Board members stated they were in favor of approving the application for the following reasons:

„« The homeowners demonstrated a clear hardship

„« The homeowners had considered location options and the proposed location is the only logical one

„« There will be no substantial impact on the surrounding neighborhood

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section j±185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of

the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

MINUTES OF THE PREVIOUS MEETING:

A motion was made by Mr. Freel and seconded by Mr. Venuti to accept the October 18, 2012 Zoning Board of Review minutes as written. The motion carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Freel moved to adjourn at 7:53 P.M. Mr. Ridlon seconded the motion and the meeting was adjourned.

Respectfully submitted,

Valerie Carroll, Secretary

Thomas Kraig, Chairman

cc: Andrew Teitz, solicitor

ZONING BOARD OF REVIEW

Sitting as the

ZONING BOARD OF APPEALS

Barrington, Rhode Island

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, Mark Freel, Ian Ridlon, David Rizzolo and Stephen Venuti.

Also present was Mark C. Hadden, specially retained as counsel for the Board.

At 8:01 P.M. Mr. Kraig opened the meeting and proceeded to hear the following matter.

Appeal of James and Lynn DePasquale, 30 Dante Street, Barrington, RI 02806, from a Decision of the Planning Board dated October 2, 2012, with regard to Assessor's Plat 30, Lot 206, Columbus Avenue, Barrington, RI 02806, denying the Application dated June 20, 2012 for those reasons as appear in the written Decision.

**Present: Stephanie Federico, attorney for the owners (DePasquale), 450 Veterans Memorial Parkway, Suite 103, East Providence, RI
Andrew Teitz, counsel for the Planning Board, Ursillo, Teitz, & Ritch, 2 Williams Street, Providence, RI**

**Susan Payne Bacher, abutting neighbor, 41 Columbus Avenue,
Barrington, RI**

The meeting began with Mr. Hadden outlining the Standard of Review that governs the Board's consideration of an appeal of a decision of the Planning Board. He noted that in § 200-66 of the subdivision regulation, the standards of review are:

A. When reviewing a decision of the Planning Board or the Administrative Officer on matters subject to these regulations, the Zoning Board of Review shall not substitute its own judgment for that of the Planning Board or the Administrative Officer, but must consider the issue upon the findings and record of the Planning Board or Administrative Officer. The Zoning Board shall not reverse a decision of the Planning Board or Administrative Officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.

B. The concurring vote of three (3) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be necessary to reverse any decision of the Planning Board or Administrative Officer.

C. Where the Zoning Board of Review overturns a decision of the Planning Board or Administrative Officer, the proposed project application shall be remanded to the Planning Board or Administrative Officer at the stage of processing from which the

appeal was taken, for further proceedings before the Planning Board or Administrative Officer and/or for the final disposition, which shall be consistent with the decision of the Zoning Board.

Before testimony began, the Board wanted to state for the record that the official record to be considered was outlined in the memo dated November 1, 2012, with items 1-23 attached. The official record also includes an audio tape of the Planning Board proceedings, available to the parties. It was noted that that record did not include a transcript, as one had not been received by the Secretary to the Zoning Board.

Ms. Federico stated that her office did have a copy of the transcript.

Ms. Federico also stated for the record that she objected to the receipt by this Board of Appeal of a letter from Lawrence Bacher, who was not present, dated November 12, 2012 as part of the Appeal record, which Mr. Bacher had submitted due to his inability to attend this night's hearing. It was noted that while the letter was not part of the record of the Planning Board's decision, it could be accepted into the current proceeding and it was further noted that Mrs. Bacher was present to present the letter and speak to the issues raised within. Mrs. Bacher later addressed the Board and spoke to this issue, see, below.

Ms. Federico opened her arguments by stating that the Planning Board had erred in its Decision because they had erroneously

stepped into the role of the Zoning Board by consideration of the potential house and the waivers that would be needed for the house. She asserted that the sole proposal in the Application was the extension of Columbus Avenue; therefore, the only issues the Planning Board should have considered were those relating to the roadway extension. Therefore, she argued, the expert testimony provided by engineer Shawn Martin that there would be no substantial impact due to the road extension alone, which was not countered by another expert, should have mandated approval of the road extension.

The Board members noted that the DePasquale Planning Board Application clearly proposed and requested relief relating to a proposed single family home and the Planning Board properly considered the issues and waivers relating to the siting of the home, given that much of the storm water mitigation was being provided for the proposed home.

Mr. Teitz argued that it would be unrealistic for the Planning Board to fail to consider the home along with the proposed road extension, noting that, by the applicants presenting testimony about the home and the public sewer system, they waived any theoretical right not to have the home considered. Additionally, he argued, apart from issues related to the house, the snow removal issues as well as the environmental impacts both support the decision to deny.

Ms. Federico stated that she would like to argue by reviewing the Planning Board's decision point by point; however, the Zoning Board felt they could not do that until they had received a copy of the transcript, which Ms. Federico had only received the prior day, and which she had not distributed, and of which she alone had a copy.

Susan Bacher, an abutter, briefly addressed the Board and indicated that she was submitting, on her own behalf and on behalf of her husband, a memorandum/letter dated November 12, 2012 signed by her husband, Lawrence Bacher (who was unable to be present), and that she adopted this letter, which she offered to the Board for its consideration, which the Board then accepted for consideration.

MOTION: Mr. Freel moved to continue the matter to the January 17, 2013 meeting, directing the attorneys to provide the following information with the agreed-upon deadlines:

„« PDF copy of the transcript ASAP

„« Memorandum from the applicants attorney no later than 12/6/12

„« Any response memoranda no later than 12/21/12

Mr. Ridlon seconded the motion and it carried unanimously (5-0).

ADJOURN:

At 8:45 P.M. Mr. Freel moved to adjourn the meeting, to be continued anew to the above date. Mr. Ridlon seconded the motion and the meeting was unanimously (5-0) adjourned.

Respectfully submitted,

Valerie Carroll, Secretary

Thomas Kraig, Chairman

cc: Mark Hadden